IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4471 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

REAL PRINTERY & 2 - Petitioner(s)
Versus
GENERAL COOP BANK LTD NR NARANPURA RAILWAY CROSSING - Respondent(s)

==========

Appearance :
MR SURESH M SHAH for Petitioner(s) : 1 - 3.
RULE SERVED for Respondent(s) : 1,
MR PV NANAVATI for Respondent(s) : 1,
MR VIBHUTI NANAVATI for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 27/11/2007

ORAL JUDGMENT

1. This petition has been preferred challenging Judgment, Award and Decree dated 12.08.1997 made by the Board of Nominees in Lavad Suit No.1346 of 1988 filed by respondent-Bank against the petitioners, and the order dated 28.10.1999 made by the Gujarat State Co-operative Tribunal (the Tribunal) in Appeal No.396 of 1997 whereunder the Judgment of the Board of Nominees was confirmed.

2. In light of the view that the Court is inclined to take RULE. Learned advocate for the respondent-Bank is directed to waive service.

3. The facts are not in dispute. Respondent-Bank filed Lavad Suit before the Board of Nominees seeking to recover a sum of Rs.4,87,321.96 (Rupees Four Lacs Eighty Seven Thousand Three Hundred Twenty One and Ninety Six Paise Only) with interest at the rate of 19.5% from the date of the Suit till the realisation of the amount. On 12.08.1997, the Suit

was allowed and Judgment, Award and Decree were made in favour of the respondent-Bank. Being aggrieved the petitioners went in appeal before Tribunal. Amongst various grounds which were raised by the petitioners before the Tribunal vide Ground No.17 a specific grievance was made that the Advocate of the petitioners was permitted to retire by the Board of Nominees, but there was neither any intimation from the Advocate concerned about the proposed retirement nor was any Notice issued by Board of Nominees after permitting the Advocate concerned to retire. Therefore, the case of the petitioner-Defendants could not be represented in absence of opportunity.

4. As can be seen from the impugned order of Tribunal, in paragraph No.1 the aforesaid ground raised by the petitioners has been specifically summarized and reproduced by the Tribunal. However, in Paragraph No.4 of the order which records the findings of the Tribunal, there is no finding in relation to the ground about absence of Notice and as a consequence absence of opportunity.

5. The learned advocate for the petitioners has assailed both the orders of the Board of Nominees and the Tribunal principally on the ground that the entire case of the petitioner-Defendants was not represented despite the fact that an Advocate had been engaged by petitioner-Defendants. That various observations regarding number of adjournments having been sought by petitioner-Defendants were not correct as the adjournments had been sought by Advocate on his own and not under instructions of petitioner-Defendants. That therefore the right of the defendants to tender written statement, right of the defendants to cross-examine the witness of the plaintiff-Bank, and the right of the defendants to lead evidence were closed by the Board of Nominees without any opportunity to the Defendants. That the Advocate concerned was permitted to retire without there being any intimation from the Advocate to the petitioners. Moreover, the Board of Nominees also failed to issue a fresh Notice to the defendants after permitting the Advocate to retire thus resulting in an ex-parte Judgment, Award and Decree. In support of the submissions made reliance has been

placed on the Apex Court decision in case of *Rafiq and another V/s. Munshilal and another* AIR 1981 SC 1400 and a decision of this Court in the case of *Patel Maganlal Dhanjibhai and Another V/s. Patel Laxmandas Naranbhai* 1987 (1) GLH 402.

6. The learned advocate for the respondent-Bank submitted that the petition did not deserve any consideration considering the conduct of the petitioners since 1988 when the suit was preferred by respondent-Bank. That the petitioner-Defendants took a chance by observing the proceedings from side lines and only when an adverse decision was rendered, did they make a grievance. That as could be seen from the pursis for retirement presented by the Advocate concerned before the Board of Nominees the Advocate had retired in absence of instructions because despite the fact that petitioner No.2 was intimated time and again telephonically no instructions were forthcoming. That therefore there was no failure of opportunity in so far as petitioner-Defendants are concerned and the orders made by the Board of

Nominees and the Tribunal were not required to be interfered with.

7. As noted hereinbefore a specific ground was raised before the Tribunal vide Ground No.17 by the petitioner-Defendants (Appellants before the Tribunal) but after recording the said contention Tribunal has failed to deal with the said contention. In the ground, the petitioners have specifically stated that the averments made in the retirement pursis are not correct. That the learned advocate had not informed the petitioners about the retirement. That the Board of Nominees did not issue any Notice to the petitioner-Defendants permitting the Advocate to retire. These are all issues which turn on facts and for which evidence was required to be lead. The Tribunal ought to have dealt with this aspect of the matter bearing in mind that in the event the petitioners were justified in making the aforesaid grievance by raising this ground, the entire Judgment and Award made by the Board of Nominees might have a different complexion, or ultimately even after the opportunity, the same conclusion might have been

arrived at after negativing the submissions made by the petitioner-Defendants. But, in the first instance, the Tribunal was required to apply its own to the grievance ventilated and decide whether the grievance was justified in light of the facts and evidence on record. In other words, whether the factual statements made in the ground were supported by any evidence on record. After reproducing the contention the Tribunal could not have just omitted to deal with the said ground by merely dealing with other grounds which challenged the Judgment and Award on merits of the controversy between the parties. It was open to the Tribunal to either accept the grievance made by the petitioner-appellants before it, or reject the said ground by assigning cogent reasons, or set aside the matter to the Board of Nominees. In any view of the matter, the Tribunal was required to deal with the said ground and the order of the Tribunal ought to have reflected application of mind by assigning reasons, howsoever brief: Unfortunately, Tribunal has failed to deal with the said ground thus resulting in a situation where a party who is agitating lack of opportunity before the

Board of Nominees has been heard by the Tribunal but no finding recorded qua the grievance made.

8. In the circumstances, without recording any opinion as to whether the grievance as ventilated vide Ground No.17 in the appeal before the Tribunal is justified or not the impugned order dated 28.10.1999 is quashed and set aside and Appeal No.396 of 1997 stands restored to file so as to give a fresh opportunity of hearing to both the sides and decide the appeal afresh after recording clear findings in relation to various issues raised before the Tribunal.

9. Before parting, it is necessary to record that it is not in every case that an order of Tribunal is required to be set aside. There could be cases where out of number of grounds only certain grounds are pressed and in such circumstances, a party cannot be heard to make a grievance qua the order of the Tribunal. In the present case, Ground No.17 was pressed into service, the Tribunal has

recorded the said contention and thereafter failed to deal with the said issue and hence, the order suffers from a legal infirmity which requires the Tribunal to be directed to hear the appeal afresh.

10. In light of the view that the Court has taken, it is not necessary to pass any orders or make any directions qua the remaining prayers. Accordingly, the petition is allowed in the aforesaid terms. It will be open to the parties to move the Tribunal for expeditious hearing of the appeal. Rule made absolute to the aforesaid extent. There shall be no order as to costs. R & P to be returned forthwith.

(D.A.MEHTA, J.)

ashish//